

No. 14/13/87-6 Lab./317.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s Bhiwani Textile Mills, Bhiwani *versus* Ram Kumar:—

BEFORE SHRI B. R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR.

Reference No. 740 of 90.

Date of receipt: 25-7-89.

Date of decision: 6-2-95.

SHRI RAM KUMAR, S/O PARBHU, QUARTER NO. 79, LABOUR COLONY,  
BTM ROAD, BHIWANI .. Applicant.

*versus*

BHIWANI TEXTILE MILLS, BHIWANI

.. Respondent-Management.

*Present:*

Shri Kishan Chand, for the workman.

Shri M. M. Kaushal, for the management.

#### AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short 'the Act'), the Governor of Haryana referred the following dispute between Ram Kumar and the above mentioned management for adjudication to this court,—*vide* Labour Department letter No. Bwn./142-89/29065-70, dated 5th July, 1989:—

Whether services of Ram Kumar were terminated or he left the job by absenting himself?  
In either event, to what relief is he entitled?

2. According to Ram Kumar, workman, he was appointed as S. Coal Coolie in the power department of the management on 1st April, 1985. However,—*vide* order dated 31st January, 1989, he was transferred to the winding department as a workman and he under went training for one month for the new job, but he could not attain perfection for the new job in the winding department and therefore, he requested the management that he may be allowed some other work of manual labour like helper to fitter. On 5th March, 1989, it is alleged that when the workman approached his superior to attend to the coolie duty, he was not allowed to do so and his services were orally terminated on that date. According to the workman, it amounted to 'retrenchment' as defined in the Act and since the provisions of section 25-F of the Act, were not complied with, his retrenchment was illegal, unjustified and against the principles of natural justice. He, therefore, prayed for reinstatement with full back wages and other consequential benefits.

3. In the written statement filed by the management, it was stated that the workman who joined as S. Coal Coolie in power house, was transferred to winding department,—*vide* letter dated 31st January, 1989 and this transfer was affected as per the agreement entered into between the parties. Thereafter, the workman was given training in the winding department and after serving for two months the workman started absenting from duties of his own. The workman thereafter, raised a demand notice on 15th March, 1989, alleging his termination and the management in the written comments stated that the services of the applicant were never terminated and workman did not turn up of his own. Further, during conciliation proceedings, the applicant was repeatedly asked to report for work, but he did not do so. It was therefore, stated that it was not a case of retrenchment of the workman by the management. In the preliminary objections, it was pleaded that real dispute between the parties had not been referred and as such, the reference was bad in law and was not tenable. It was also pleaded that the workman was now gainfully employed.

4. On the pleadings of the parties, the following issues were framed on 7th June, 1991 by my learned predecessor:—

(1) As per terms of reference.

- (2) Whether the workman was asked to report for duty? If so, when and to what effect?
- (3) Whether the workman is gainfully employed? If so, since when and to what effect?
- (4) Relief.

5. The parties led evidence in support of their rival claims. I have heard Shri Kishan Chand Authorised representative of the workman and Shri M. M. Kaushal authorised representative of the management and have gone through the case file carefully. My findings on the above issues are as under:—

**Issue No. 1 & 2 :**

6. Both these issues are inter-connected and as such, are being taken up together for purpose of facility.

7. Ram Kumar, workman appeared as his own witness, as WW-1 and he also produced Kishan Chand, as WW-2 and Piara Singh as WW-3. Ram Kumar, WW-1 in his statement has reiterated his case as mentioned in his claim statement and stated that he was removed from the job illegally. Kishan Chand, WW-2, while proving the copies of representations Ex. W-1 to Ex. W-3 sent to the management, stated that the workman was illegally removed from job. Piara Singh WW-3, had also stated that the workman had been working as a coolie on the boiler and in 1989, when the boiler run by coal, was substituted by the boiler run by oil, the workman was asked to work in winding department. He further stated that the workman prayed that instead of winding department he be sent to the boiler or engine, but this request of the workman was not acceded to and the workman was asked to work in winding department. He however, admitted that no termination order was issued to the workman by the management.

8. On behalf of the management, Raj Kumar, Head Time Keeper was examined as WM-1 and he claimed that as per terms of agreement Ex. M-4, executed between the union and the management, the services of the workman were transferred to winding department where he was given training in the new job, but the workman absented from duties after 1½—2 months and did not turn up thereafter.

9. It is admitted by Ram Kumar, workman in his cross-examination that the job of coal coolie stood ceased in view of the change of machinery and it is also admitted by him that thereafter, he was transferred to winding department. It is also admitted in para 3 of the claim statement that the workman had undergone training for about one month and the workman had also admitted therein that he could not attain perfection for the new job in the winding department. It is also admitted by the workman in his cross-examination that before the Conciliation Officer, the management did not state that they had terminated his services. Ex. M-1 and Ex. M-2 were proved by Kishan Chand, WW-2 and a perusal of Ex. M-2 would show that before Conciliation Officer the management had asked that the workman be directed to report for duty in the winding department and that his services were never terminated by the management. It is admitted by Piara Singh, WW-3, that no order of termination was issued by the management. In para 4 of the claim statement, the workman has pleaded that on 5th March, 1989, he approached to be allowed to attend the job of coolie duty. From this pleading, it stands established that it was the workman, who insisted to be given the job of coolie on 5th March, 1989, when he had already been transferred to winding department on 31st January, 1989. This attitude of the workman was uncalled for as he had admittedly received training to work in the winding department. As such, he has no justification to insist on 5th March, 1989 that he should be assigned the job of coolie. It is admitted by the workman in cross-examination that the job of coal coolie ceased due to change of machinery and transfer of the workman in winding department was justified in the light of the agreement dated 25th October, 1987 (Ex. M-4) executed between the union and the management.

10. From the above chronology of events, it would be manifest that consequent upon the abolition of job of coal coolie due to modernization of machinery, the services of the workman were transferred to winding department in terms of agreement dated 25th October, 1987 (Ex. M-4) and on his own admission, the workman received training for the new job. It is also clear that the workman on 5th March, 1989, insisted that he be assigned the job of coolie, which post did not exist on that date and thereafter, he started absenting from duties. Since the workman had admitted that he could not attain perfection for the new job during training, it is highly probable that the workman started absenting from duties with effect from 5th March, 1989 onwards. It is also evident from Ex. M-2 that during conciliation proceedings, an offer was made to him to resume his duties in the winding department but the workman did not avail of this offer for obvious reason that he was not willing to work in the winding department. Taking the totality of the circumstances into consideration, it, therefore, becomes irresistible that it was the workman who abandoned his job by remaining absent from duties and that his services were not terminated by the management.

Facts were almost similar in the authority of Hon'ble Punjab & Haryana High Court reported as PANIPAT COOP. SUGAR MILLS LIMITED *versus* LABOUR COURT & OTHER, 1994(II) LLJ-404. In that authority also, an offer was made by the management before the Conciliation Officer for employment, but the workman did not avail of the said offer. This authority is applicable on all fours to our case and the workman is not entitled to any relief.

11. So far as the authority of D.K. YADAV *versus* J. M. A. INDUSTRIES, (VOL-83) FJR-271 and the other authority of Punjab & Haryana High Court reported as KRISHNA SINGH *versus* PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, FARIDABAD, 1993-SCT-718, cited by Authorised representative of the workman, are concerned, the law enunciated in these authorities is unexceptionable, but each case has to be decided on its own facts. In our case, it stands established that the workman himself abandoned the job, as he was not willing to work in the winding department and it is not a case of striking off the name of the workman from the rolls of the factory on the ground of absence.

12. I, therefore, hold that the workman abandoned the job by absenting from duties and that the management did not terminate his services and the workman is not entitled to any relief. I also hold that during the conciliation proceedings, the management asked the workman to report for duty in the winding department, but the workman failed to avail of the said order. Both these issues are therefore, answered against the workman.

Issue No. 3;

13. This issue was not pressed by the authorised representative of the management and was conceded to by him during arguments, obviously, because there is no evidence on the file to prove the same. This issue is, thus answered against the management.

Issue No. 4 : Relief;

14. In view of my findings on the above issues, the petitioner left the job by absenting himself and he is not entitled to any relief. The reference is answered accordingly, with no order as to costs.

The 6th February, 1995.

B. R. VOHRA,

Presiding Officer,  
Industrial Tribunal-cum-Labour Court,  
Hisar.

Endorsement No.                      dated the

A copy with two spare copies, is forwarded to the Financial Commissioner & Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh for necessary action.

B. R. VOHRA,

Presiding Officer,  
Industrial Tribunal-cum-Labour Court,  
Hisar.

No. 14/13/87-6Lab./367.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s Managing Director, The Bhiwani Central Co-operative Bank Ltd., Bhiwani *versus* Shri Ajit Singh.

BEFORE SHRI B. R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 140 of 90

Date of receipt : 28-8-1989

Date of Decision : 10-2-1995

SHRI AJIT SINGH, S/O HARCHAND, VPO PUTHI MANGAL KHAN,  
TEHSIL HANSI (HISAR)

.. Applicant.

*versus*

MANAGING DIRECTOR, THE BHIWANI CENTRAL COOPERATIVE BANK LTD.,  
BHIWANI

.. Respondent Mgt.

Present :

Shri S. S. Gupta, for the workman.

Shri Chetan Anand for the management.

## AWARD (PART-II)

In exercise of the powers conferred by clause (c) of Sub Section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short 'the Act), the Governor of Haryana referred the following dispute between Ajit Singh and the above mentioned management for adjudication to this Court,—*vide* Labour Department letter No. Ben/122-89/36489-94 dated Nil :—

"Whether termination of services of Ajit Singh, secretary is justified and in order? If not, to what relief is he entitled?

2. According to the workman, he was appointed as Secretary,—*vide* appointment letter dated 2nd November, 1973. It was stated by him that in February, 1976 when he was holding charge of various societies, he was suspended, but no charge sheet was served upon him. After a lapse of three years, he was told that a criminal case had been registered against him, and that the question of his reinstatement would be decided only after the decision in the criminal case. The said criminal case was decided in 1987, and when he approached the management to take him back on duty, he was told that his services had already been terminated. According to him no such order was communicated to him. The workman had, therefore, claimed that the said termination order was illegal, unjustified and against the principles of the Act. He, therefore, prayed for reinstatement with full back wages, and other consequential benefits.

3. The management, in its written statement, pleaded that the workman had misappropriated huge amounts, while working as Secretary in the societies in the year 1976, and that an enquiry was conducted against him as per rules, and he was found guilty of embezzlement and misappropriation. Finally he was dismissed from service on 15th December, 1980, and the order of dismissal was conveyed to him by post. It was, therefore, stated that the dismissal order was perfectly justified. It was also stated by the management that the reference was time barred. Several other preliminary objections were also raised by the management, as they are reflected in the following issues framed on 13th July, 1990 by my learned predecessor :—

- (1) As per reference.
- (2) Whether the reference is barred by time and not maintainable?
- (3) Whether the workman is estopped by his act and conduct from raising the present demand?
- (4) Whether a just and proper enquiry was held against the workman? If so, to what effect?
- (5) Whether the reference is not maintainable as alleged in preliminary objection No. 6 & 7?
- (6) Relief.

4. Issue No. 4, regarding domestic enquiry was treated as preliminary issue,—*vide* my award (Part-I) dated 29th November, 1994 the said preliminary issue was decided against the management and it was held that the domestic enquiry conducted in this case was not just and proper. The management was given an opportunity to lead evidence to substantiate the charges on merits.

5. The parties led evidence on merits of the case. I have heard Shri S. S. Gupta Authorised Representative of the workman and Shri Chetan Anand, Authorised Representative of the management and have gone through the case file carefully. My findings on the remaining issues are as under :—

## Issue No. 1 :

6. In order to substantiate the charges contained in the charge sheet Ex. MX/2 and the list of allegations Ex. M-2, the management had examined Prem Kumar, Secretary as MW-1 and while testifying various documents Ex. MW-1 to Ex. MW-11, he deposed that in 1976-77, Ajit Singh was working as Secretary of the Society and he used to maintain record. He further stated that as per audit report, a copy of which is Ex. W-1, a sum of Rs. 11798.80 was misappropriated by Ajit Singh. He also deposed that Ajit Singh had taken Rs. 660 from Dharampal and Rs. 2210 from Srichand, members, but did not account for them in the accounts of society. He also stated that Ajit Singh had given a writing on 28th January, 1976,—*vide* Ex. MW-9 and had undertaken to deposit the amount mentioned therein by 15th February, 1976. However, this was not done by Ajit Singh workman. He also stated that the report of Sub Inspector in this regard is Ex. MW-10 and copy of report sent to Assistant Registrar, Co-operative Societies (hereinafter referred to as ARCS) is Ex. MW-11. When Ex. MW-11 report sent to ARCS is read in conjunction with the list of allegations contained in Ex. M-2, it would be seen that this report relates to the charges levelled against the workman in this case. A perusal of various copies Ex. MW-2 to Ex. WW-8, would show that Ajit Singh had received a sum of Rs. 8796.65 from various members and had embezzled the said amount. Ex. MW-8 also referred to the audit report and states that the workman had embezzled Rs. 11796.65 in all and he has not accounted for the said amount.

7. Ajit Singh, who appeared as MW-1, had stated that whatever amount he realised from various members, were entered in the relevant record of the society and he used to handover money to the cashier who deposited the said amount in the bank. This statement made by Ajit Singh is as much vague as it can be

and in my opinion, the onus was upon him to summon the relevant record, including cash book, to prove that he had accounted for various amounts recovered from the members, from time to time.

8. Shri S. S. Gupta, Authorised Representative of the workman, during arguments contained that there were variations in the amounts allegedly embezzled by the workman and shown in documents Ex.MW-1 to Ex. MW-11 and that on this account, these documents should not be relied upon. I am afraid, I am not in agreement with this argument and as already stated above, the onus was upon Ajit Singh, workman to account for various amounts released from various members, and as proved by Prem Kumar, Secretary, MW-1.

9. In the light of discussion above, I hold that management has successfully proved that the workman had embezzled a sum of Rs. 11738.80, as mentioned in the audit report, and that the management was justified in terminating the services of the workman and he is not entitled to reinstatement.

10. The services of the workman were terminated,—vide order dated 15th December, 1980, Shri S.S. Gupta, Authorised Representative of the workman argued that since the domestic enquiry conducted by the management in this case had already been held to be illegal, the workman is entitled to wages from 15th December, 1989, the date of termination till, today, when the guilt of the workman had been proved before this Court for the first time. In this connection, he relied upon the observations made by Hon'ble Supreme Court of India in the authority reported as *Sujrat Steel Tubes Ltd. versus Gujrat Steel Tube Mazdoor Sabha*, AIR-1980-SC-1894 as also the authority of Hon'ble Supreme Court reported as *Desh Raj Gupta versus Industrial Tribunal Fourth U. P. Lucknow*, in AIR 1990-SC-2174.

11. In the instant case, however, the services of the workman were terminated on 15th December, 1980 but the workman did not raise demand notice till 9th March, 1989. The explanation given by him in this regard is that he was told that his case would be taken up after the decision of the criminal case and that the said criminal case was decided on 10th August, 1987. However, in the written statement, the management has specifically pleaded in para 4 of the preliminary objections that the order of termination was conveyed to the official by post, but this plea was not specifically denied in the rejoinder dated 13th July, 1990 filed by the workman. Keeping in view the long silence of the workman, as discussed above, I am of the view that there can be no justification for granting back wages to the workman at any rate till 9th March, 1989, when he raised demand notice even treating the order of termination dated 15th December, 1980 as non-est because principles of natural justice were violated and no opportunity was given to the petitioner. However, I am inclined to award full wages to the workman from 9th March, 1989 till today, keeping in view the normal rule laid down by Hon'ble Supreme Court in *Desh Raj Gupta's case (SUPRA)*. The latest authority on this point is reported as *Rakesh Bahl versus Andhra Pradesh State Road Transport Corporation & others* 1994-LAB-I.C. 1199. Except the back wages, as stated above, the workman is not entitled to any relief. This issue is answered accordingly.

Issue No. 2, 3 & 5

12. All these issues were not pressed by the Authorised Representatives of the management and were conceded to by him during arguments. All these issues are, thus, answered against the management. Issue No. 6 Relief—

13. In view of my findings on the above issues, it is held that the petitioner had embezzled a sum of Rs. 11798.80 and the management was justified in terminating the services of the workman and he is not entitled to reinstatement. However, the petitioner shall be entitled to full wages from 9th March, 1989, the date of raising demand notice, till today, the date of this award i.e. 10th February, 1995. He shall not be entitled to any back wages from 15th December, 1980, the date of termination, till 8th March, 1989, when he kept silent and did not raise any demand notice. The management is directed to pay this amount to the petitioner within a period of three months from today, failing which, the petitioner shall be entitled to interest at the rate of 12% per annum from the date of this award, till the date of actual payment. No order is however, made as to costs.

B. R. VOHRA,

The 10th February, 1995.

Presiding Officer,  
Industrial Tribunal-cum-Labour Court,  
Hisar

Endorsement No.                      dated the

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B. R. VOHRA,

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